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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : Sudhindra P. Herle
Serial No. : 10/600,223
Filed : June 20, 2003
For : APPARATUS AND METHOD FOR PERFORMING AN
OVER-THE-AIR SOFTWARE UPDATE IN A DUAL
PROCESSOR MOBILE STATION
Art Unit : 2191
Examiner : Satish Rampuria

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal. The review is requested for the reason(s) stated in the arguments below, demonstrating the clear legal and factual deficiency of the rejections of some or all claims.

Claims 1-24 were rejected as anticipated by U. S. Patent Application Publication No. 2004/0068721 to *O'Neill, et al.* (hereafter, simply "O'Neill").

Claim 1 requires a wireless communication device comprising, among other limitations, a first CPU and a second CPU, each with specific capabilities. This is not taught or suggested by O'Neill. O'Neill's primary description of its "wireless communication device" is in paragraph 0032, reproduced below, and neither this paragraph nor anything else in O'Neill includes an explicit teaching of a CPU or other processor at all, although it is of course reasonable to assume that a processor must be present to perform the tasks described. Such an assumption does not support an anticipation rejection, however.

O'Neill does not teach a first CPU capable of controlling wireless communications with a wireless network, having a first memory associated with it. This is a specific limitation of claim 1, and patentably distinguishes this claim from O'Neill. Examiner Rampuria incorrectly indicates that this feature is taught by O'Neill at paragraphs 0014 and 0032 (reproduced in a previous response). In O'Neill, there is no specific teaching of any "first CPU" at all, and although O'Neill mentions a memory, there is no specific teaching of a memory associated with a first CPU, as claimed. As Examiner Rampuria is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, the rejection is legally and factually deficient.

O'Neill does not teach or suggest a second CPU capable of executing an end-user application on the wireless communication device, and a second memory associated with it. Examiner Rampuria incorrectly states that a second CPU is taught by O'Neill in paragraph 0011, but it is clear that Examiner Rampuria completely misdescribes this paragraph as having any teaching of a second

central processing unit (CPU) in the wireless communications device that is capable of executing at least one end-user application on said wireless communication device. O'Neill doesn't specifically teach even one CPU in a wireless communication device, and certainly doesn't teach or suggest a wireless communication device having both a first CPU and a second CPU, as required by claim 1. As Examiner Rampuria is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, the rejection is legally and factually deficient.

Examiner Rampuria's Advisory Action highlights his error. He alleges that "O'Neill disclosed the distribution environment (first CPU) which provides the software updates to the device (second CPU) wirelessly (See para [0031])." While O'Neill's distribution environment 107 may or may not include a CPU, it is not part of the wireless communication device, as required by claims 1 and 13. Examiner Rampuria has not and cannot show a wireless communication device having both a first CPU and a second CPU, as claimed. The rejection is legally and factually deficient.

O'Neill certainly does not teach or suggest that the first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in a second memory associated with the second CPU, as claimed. Examiner Rampuria alleges that this feature is taught in paragraph 0032, reproduced above, but is a clear mischaracterization of O'Neill's teachings. O'Neill does not teach a wireless device having a first memory associated with a first CPU and a second memory associated with a second CPU, as in claim 1. O'Neill does not teach a wireless communication device wherein a first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in a memory associated with a second CPU, as required by claim 1. As Examiner Rampuria is required, in an anticipation rejection, to

show where each claim element is identically taught in the reference, Examiner Rampuria has failed to make a proper anticipation rejection.

O'Neill therefore does not teach or suggest the limitations of independent claim 1, or similar limitations of independent claim 13. All rejections are therefore traversed, in detail, with particular emphasis on Examiner Rampuria's complete failure to meet his legal burden of a proper anticipation rejection. This is a legally and factually deficient rejection, as can be discussed both in a pre-appeal review request and again on appeal, if necessary.

Further, as O'Neill does not teach or suggest multiple processors, it does not teach or suggest an interprocessor communication unit as in claims 4 and 7.

O'Neill further does not teach or suggest the specific code replacement as claimed, e.g., in claims 2 and 9. Examiner Rampuria again refers to paragraph 0032 for support of his rejection, and again is incorrect. Paragraph 0032 does not teach or suggest a CPU – it doesn't specify a CPU at all – that is capable of executing a first upgrade agent program that replaces existing code in a first memory with replacement code from a downloaded software upgrade file. This paragraph doesn't teach code replacement at all. As Examiner Rampuria is required, in an anticipation rejection, to show where each claim element is identically taught in the reference, Examiner Rampuria has failed to make a proper anticipation rejection.

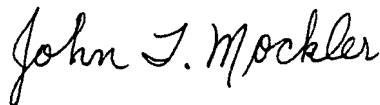
CONCLUSION

As a result of the foregoing, the Applicant asserts that the claims in the Application are in condition for allowance over all art of record, and that the rejections are both factually and legally deficient, and respectfully requests this case be returned to Examiner Rampuria for allowance or, alternatively, further examination.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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